

EXHIBIT

5

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

- - -

FERREOL CARDENAS, SR., Individually,))
and as the Personal Representative))
for FERREOL CARDENAS, JR., Deceased))
and ROSA CARDENAS,))

Plaintiffs,))

vs.))

CITY OF MANHATTAN BEACH, MANHATTAN))
BEACH POLICE OFFICER MICHAEL LYNCH))
(Serial No. 313), MANHATTAN BEACH))
POLICE OFFICER B. MUZATKO (Serial))
No. 342) and Does 1 through 10,))
inclusive,))

Defendants.))

No. 2-15-cv-01469 PJW

DEPOSITION OF

J. DANIEL AUGUSTINE, M.D.

LOS ANGELES, CALIFORNIA

APRIL 27, 2016

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REPORTED BY: NATALIE BALLESTERO, CSR NO. 10149

FILE NO: AA04A47

1 J. DANIEL AUGUSTINE, M.D.,
2 having first been duly sworn, was
3 examined and testified as follows:
4

5 EXAMINATION

6 BY MR. WILLIAMSON:

7 Q. Can you please state your full name and spell
8 your last name for the record please.

9 A. Yes. It's Job Daniel Augustine. Last name
10 is A-U-G-U-S-T-I-N-E.

11 Q. Good afternoon, Dr. Augustine. I introduced
12 myself off the record. My name is Peter Williamson. I
13 represent the Cardenas family in their action against the
14 City of Manhattan Beach.

15 Thank you, Doctor, for taking the time to do
16 this with us today.

17 We had a discussion off the record
18 concerning some time constraints that you have today.
19 You indicated to us that you could go to perhaps 3:00,
20 3:15 at the latest in this deposition. And what counsel
21 and I have agreed is that in the event we are not able to
22 finish today, Mr. Sain is not able to finish his
23 questioning -- I think I'll probably finish mine, but in
24 the event he's not able to finish his, we'll reconvene to
25 a second date, and we'll complete this deposition another

1 Q. And the next thing you mention in your
2 description of traumatic injuries is that there's a focal
3 bilateral deep fascial hemorrhage of the overlying
4 splenius capitis muscle.

5 What does that refer to?

6 A. Those are the muscles that will attach to
7 the back of the skull, the splenius capitis, and that's
8 the fascia of the outer lining that encapsulates the
9 muscle which demonstrates a hemorrhage within that.

10 Q. I'm going to mark just again for purposes of
11 illustration. This will be No. 4, I believe.

12 (Whereupon Plaintiff's Exhibit 4
13 was marked for identification.)

14 BY MR. WILLIAMSON:

15 Q. And does this illustration -- wonderful
16 Netter illustration which I love -- does he show the
17 muscles that you're referring to?

18 A. He sure does.

19 Q. Where would they be? Are they identified on
20 this diagram?

21 A. Yes.

22 Q. So these are the muscles that basically --
23 are they the muscles that support your head or -- Well,
24 let me let you explain it. What are the purposes of
25 these muscles?

1 A. They're some of the muscles. They offer
2 vagus movements. The exact, I don't recall right now,
3 but they definitely help maintain, among other muscle
4 groups, the integrity of -- the postural integrity of the
5 head.

6 Q. Now, it may be obvious, but just for the
7 record, what is a hemorrhage?

8 A. A hemorrhage is a bleeding.

9 Q. So not only do you have a skull fracture,
10 but there is some kind of bleeding in the area of these
11 muscles that we just referred to.

12 What would cause the bleeding apart from the
13 skull fracture? Do you have an opinion about that?

14 A. What would or what could?

15 Q. What could?

16 A. Well, any time there's a hemorrhage, that's
17 a sign of trauma of some sort. In this case it may very
18 well be related to the fracture with blood tracking down
19 along the fascia.

20 Another possibility is another some sort of
21 trauma that was inflicted on that area, I would presume,
22 that caused that hemorrhage.

23 Q. That's exactly what I was getting to. Could
24 there have been some independent trauma to the neck
25 independent of the skull? In other words, the skull

1 striking something or some blow to the head could be one
2 trauma, but there could have been an independent trauma
3 to the upper neck; is that right?

4 A. It's possible.

5 Q. There was another skull fracture in addition
6 to the 2-inch long midline that we just described
7 earlier; correct?

8 A. Correct.

9 Q. And this was non-displaced as well. I think
10 you identified it as a 1 1/4 inch linear fracture; is
11 that right?

12 A. Yes.

13 Q. Now, you say it's identified coursing from
14 the right lateral aspect of the foramen magnum to the
15 right temporal bone petrosal ridge.

16 Describe to us what that all means.

17 A. Yes. Sure.

18 So again this fracture was identified
19 following the removal of the brain. So it would be down
20 into the base of the skull where the foramen magnum --
21 where the spinal cord travels out of, and we see the
22 midline fracture that we described previously, and to the
23 right of that again spanning from the foramen magnum and
24 extending out towards the right side of the base of the
25 skull into a region which is a different bone, the

1 BY MR. WILLIAMSON:

2 Q. Okay. You'd defer to a toxicologist with
3 respect to that question?

4 A. That, yes.

5 Q. Okay. Now, I want to go to Page 6 of your
6 autopsy report under your opinions section.

7 And you indicate that the cause of death is
8 attributed to blunt head trauma.

9 Were you able to determine, as I referenced
10 earlier, what the manner of that blunt head trauma was?

11 A. Oh, yes.

12 Q. Okay. What do you believe the manner of
13 that was?

14 A. Homicide.

15 Q. Death meaning death at the hands of another?

16 A. Correct.

17 Q. Okay. You came to that conclusion based on
18 what?

19 A. Based on circumstances and history of an
20 altercation with law enforcement, with the deployment of
21 the Conducted Energy Device, and a subsequent fall which
22 is correlated to my autopsy findings of linear skull
23 fractures, further supported by Dr. Lwin's
24 neuropathological findings.

25 Q. Okay. Let me ask you, first of all, did you

1 consider any other possibilities for the blunt force
2 trauma other than a fall, for example?

3 A. I have no other history to suggest that it
4 was.

5 Q. Okay. But in this case the history was
6 that, according to the officer who was standing 3 feet
7 away from the individual, that he didn't observe him hit
8 his head when he fell, and then a second report which
9 says he went to his knees and laid down.

10 Would either of those two, assuming -- Well,
11 let's take the first instance. Let's say that, according
12 to the officer, he became rigid, meaning Mr. Cardenas; he
13 fell backwards; he fell on his rear end and then on his
14 back but did not strike his head.

15 Would those facts be consistent with the
16 death in this case?

17 A. Are you -- are you indicating that there was
18 absolutely no witness of head strike to the ground?

19 Q. Correct. I'm relying on what the officer
20 said.

21 The officer reported he was standing 3 feet
22 away. He discharged his taser. Mr. Cardenas became
23 rigid and he fell backwards, and he landed on his rear
24 end and his back, but did not strike his head, according
25 to the officer who was only 3 feet away.

1 Would those facts be consistent with the
2 death in this case?

3 A. No.

4 Q. On then to the second version, which is that
5 Mr. Cardenas went to his knees and laid down. We don't
6 know whether that was voluntary or not. It's not
7 described.

8 But assuming he went to his knees and laid
9 down, would that be consistent with the death in this
10 case?

11 A. No.

12 Q. Describe to me, if you can, how hard the
13 occipital bone is. Is that a pretty strong bone?

14 Well, I don't want to put words in your
15 mouth. How strong a bone is that, if you can describe it
16 or quantify it?

17 A. I can't other than to say it's a thick bone
18 which is one of the hardest substances in our body, if
19 not the hardest.

20 Q. Would you agree that it would require a fair
21 amount of force to that bone in order to fracture it?

22 A. I don't know what you mean by fair amount,
23 but more than it would -- you know, whatever threshold
24 that is, it obviously passed that threshold.

25 Q. Okay. But you can't say whether that head

1 or bleeding, a darker discoloration around the eyes.
2 That would lead me to think that maybe the base of the
3 skull might be fractured.

4 In this case this is a very common type of
5 finding with no real significance to us at autopsy.

6 Q. Okay. Going back to plaintiff's Exhibit
7 No. 2, the word you just used was ecchymosis.

8 Showing you Exhibit 2, there is
9 discoloration on what would be the right eye of
10 Mr. Cardenas; true?

11 A. True.

12 Q. Is that discoloration consistent with
13 ecchymosis?

14 A. Sure, it looks like it from this photo.

15 Q. Are there other potential causes of this
16 kind of discoloration that we see in Exhibit 2?

17 A. Other potential other than?

18 Q. Other than ecchymosis.

19 A. I'm sorry. I don't know what you're
20 referring to.

21 Q. It was clearly a bad question. I'm sorry.

22 A. Are you talking about causation, like what
23 could cause this discoloration?

24 Q. Well, no. I'll do it again.

25 With regards to this particular

1 discoloration seen on Exhibit 2, are you relatively
2 certain that this is ecchymosis as opposed to some other
3 type of injury or trauma?

4 A. Oh, no, I'm not.

5 Q. So it could be something else?

6 A. It could be a contusion, which is a bruise
7 which is a more externally inflicted trauma to the body.

8 Q. And what are the available potential causes
9 of ecchymosis even if there is one?

10 A. Bleeding within the brain within the
11 structures around it that tracks down into that region.
12 That is one potential cause.

13 Somebody in, you know, multisystem organ
14 failure could have a preponderance -- a tendency to
15 bleed, ecchymosis nature disease. There's a long, long
16 list of potential causes for ecchymosis.

17 Q. So blunt force trauma is indeed a potential
18 cause of ecchymosis?

19 A. Correct.

20 Q. And with regards to Exhibit 2, other than
21 Mr. Williamson's representation, do you have any
22 independent knowledge as to when this photograph was
23 taken?

24 A. I do not.

25 Q. And before today have you ever seen this

1 fractures, subdural hemorrhage -- those that all make
2 them more likely to be from a what we see by and large a
3 ground level fall than any other mechanism. Can I say
4 absolutely? No. But based on what we know about
5 forensic science, that's the most likely conclusion.

6 Q. Even though all of the history that was
7 provided to you -- in all of that history there is no
8 evidence of a strike to the ground -- of a head strike to
9 the ground?

10 A. Other than the skull fracture and subdural
11 and the contrecoup contusion, you're right, there's no
12 history provided that the autopsy provides that
13 information.

14 Q. But isn't it medically possible that if
15 Mr. Cardenas had struck something hard enough before the
16 fall to the ground before he was on the ground, that that
17 could have caused the trauma to his head that you
18 observed?

19 MR. WILLIAMSON: Objection. Calls for speculation.

20 THE WITNESS: That is possible, yes.

21 BY MR. SAIN:

22 Q. So in terms of cause of death, your
23 conclusion is that the cause of death was blunt force
24 trauma to the back of Mr. Cardenas's head; correct?

25 A. No.

1 MR. WILLIAMSON: I'm going to object. It misstates
2 his testimony.

3 THE WITNESS: No. My conclusion is blunt head
4 trauma.

5 BY MR. SAIN:

6 Q. Okay. And that's what caused his death?

7 A. Yes.

8 Q. Okay. And can you say to a reasonable
9 degree of medical certainty or probability that what
10 caused that blunt head trauma was a posterior fall to the
11 ground?

12 A. No.

13 Q. What role does documenting the ethnicity of
14 the person in your autopsy play in your reporting?

15 A. I'm sorry. I don't know what you mean by
16 role.

17 Q. Well, I'll rephrase.

18 When you autopsy someone, is part of the
19 normal procedure to document what that person's ethnicity
20 is?

21 A. Yes.

22 Q. Why do we do that?

23 A. To give you a depiction of the appearance of
24 that person.

25 Q. And looking at, say, Exhibit 2, the

1 medical certainty or probability at what angle
2 Mr. Cardenas's head was struck?

3 A. No.

4 Q. Based on your examination of Mr. Cardenas's
5 body, can you determine with any degree of medical
6 certainty or probability exactly when Mr. Cardenas
7 received the blunt force trauma to the head?

8 A. No.

9 Q. Based solely on your examination of
10 Mr. Cardenas's body, can you determine with any degree of
11 medical certainty or probability -- Strike that.

12 In light of your examination of
13 Mr. Cardenas's body, are you able to exclude as potential
14 causes of blunt force trauma to Mr. Cardenas's head --
15 are you able to exclude causes other than a post-taser
16 fall to the ground with a head strike?

17 A. No.

18 Q. So causes other than a post-taser fall to
19 the ground with a head strike might have been the
20 mechanism that resulted in the blunt force trauma to
21 Mr. Cardenas's head?

22 MR. WILLIAMSON: I'm going to object as vague
23 ambiguous.

24 THE WITNESS: Can I hear that back?

25 MR. SAIN: Sure.

1 Q. So in terms of what caused the blunt force
2 trauma to Mr. Cardenas's head, are you able to exclude
3 causes other than a post-taser fall to the ground with a
4 head strike? In other words, could it have been
5 something besides a post-taser fall to the ground?

6 A. Yes, it could have been something else.

7 Q. Based on your review of medical records,
8 your examination of Mr. Cardenas, is it medically
9 possible that Mr. Cardenas received any strikes or blows
10 of injuries to the head between his release from the
11 hospital on April 15, 2014 but before his readmission to
12 the hospital on April 22nd, 2014?

13 A. I couldn't rule it out.

14 Q. So that's possible?

15 A. It's a possibility.

16 Q. So assuming that Mr. Cardenas was having
17 severe headaches before the taser incident, assuming that
18 on the date of the incident he reports that he hit his
19 head inside of his car, and assuming that the only
20 officer who was there at the scene at the time of the
21 tasing said that Mr. Cardenas never hit his head at the
22 scene, in light of those three facts, can you conclude
23 with any degree of medical certainty or probability that
24 the cause of Mr. Cardenas's blunt force trauma to the
25 head was a post-taser fall to the ground?

REPORTER'S CERTIFICATE

I, NATALIE BALLESTERO, CSR No. 10149, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony of the witness, the questions
propounded, an all objections and statements made at
the time of the examination were recorded
stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken;

I further certify that I am not a relative or
employee of any attorney of the parties, nor
financially interested in the action.

Reading and signing was requested.

I declare under penalty of perjury under the laws
of California that the foregoing is true and correct.

Dated this 18th day of May, 2016.

Natalie Ballester

Natalie Ballester, CSR No. 10149

